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In The

Supreme Court of the United States

October Term, 1990

LOUISE H. RENNE, City Attorney for the City and County of San Francisco, *et al.*,

Petitioners,

v.

BOB GEARY, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF ON THE MERITS

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REPLY BRIEF ON THE MERITS

I.

INTRODUCTION

Ballot-qualified parties occupy a privileged place in California's government. The people of California enacted Article II, §6(b) to confine the parties' state-enhanced power to its intended arena. Respect for the citizens' right to select their own governmental forms should guide this Court's decision as to whether §6(b) must be "narrowly tailored," and if so, just how narrowly tailored it must be.[1] Even under the strictest standard, however, §6(b) is valid.

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[1] As this Court has said in dictum:

"[O]ur scrutiny will not be so demanding where we deal with matters resting firmly within a State's constitutional prerogatives. [Citations omitted.] This is

(Continued on following page)

II.

SECTION 6(b) SERVES CALIFORNIA'S COMPELLING INTERESTS IN PRESERVING NONPARTISANSHIP

A. California's Interest In Structuring Its Government

Respondents and the California Democratic Party ("CDP") assert that §6(b) serves no compelling interest in the structure of California's government. Their argument misconceives the functions of nonpartisanship, its place within statewide government, and the role §6(b) serves in advancing the goals of nonpartisanship.

Initially, we note that no one challenges California's right to establish a nonpartisan structure of local and judicial government. *See* Cal.Const. Art.II, §6(a). Nonpartisanship serves a critical function:

> Like initiatives and referenda, which seek to give citizens direct control over passing legislation, nonpartisan systems seek to give citizens direct control over their representatives by eliminating political parties as the conduit between citizens and their government.

Note, "Local Nonpartisan Elections, Political Parties and the First Amendment," 87 Colum.L.Rev. 1677, 1697 (1987) ("Nonpartisan Elections").

The Guarantee Clause clearly protects this form of government: "Republican government . . . is responsible to its voters rather than to any outside agency." Merritt, "The Guarantee Clause and State Autonomy: Federalism for a Third Century," 88 Colum.L.Rev. 1, 41 (1988)

(Continued from previous page)

> nothing more than a recognition of a State's constitutional . . . responsibility for the establishment in operation of its own government. . . . U.S. Const., Art. IV, § 4; U.S. Const., Amd. X; *Luther v. Borden*, [7 How. 1 (1849)]); *see In Re Duncan*, 139 U.S. 449 (1891)."

Sugarman v. Dougall, 413 U.S. 634, 648 (1973).

("Merritt"). The essence of republican liberty is that those entrusted with power should answer directly to the people. *Id.* at 23.[2]

Section 6(b) serves this interest by ensuring that judges and local officials are not beholden to parties. *See* Petitioners' Brief on the Merits ("Pet.Br.") 13-16. If parties can endorse, the danger is that nonpartisan officials will be critically concerned with party support, and parties will occupy the central role nonpartisanship seeks to avoid.

The reasons this danger exists are clear. Nonpartisanship in California operates within a statewide structure that is partisan. To stabilize its political system, California gives political parties a special role.[3] To fulfill that role, parties receive special advantages. *See* Pet.Br. 15. These advantages translate into influence that cannot be segregated between statewide elections on one hand, and local and judicial elections on the other. *See* Pet.Br. 23.[4]

Moreover, the effect of these advantages is multiplied because so "many local elections involve only one viable party. . . . " Nonpartisan Elections, 87 Colum.L.Rev. at 1679.[5] In Madison's words:

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[2] Promoting direct, citizen responsibility for the electoral process is a compelling state interest. *See First Nat'l Bank v. Bellotti*, 435 U.S. 765, 788-789 (1978); *United States v. Automobile Workers*, 352 U.S. 567, 570 (1957).

[3] The state's right to give parties with demonstrated support a special position has long been recognized. *See, e.g., Jenness v. Fortson*, 403 U.S. 431 (1971); *Storer v. Brown*, 415 U.S. 724, 736 (1974); *American Party of Texas v. White*, 415 U.S. 767 (1974).

[4] In addition to the advantages already noted, California assists parties by providing a party affiliation check-off on voter registration forms. Cal.Elec. Code §501.

[5] The ACLU's statistics on San Francisco's Democratic Party domination support this point. The party balance is reversed in counties such as Orange, where Republicans outnumber Democrats by a 55.63% to 33.93% margin. Cal. Sec'y of State, *Report of Registration* (10/9/90) at 1-2.

> The smaller the society, . . . the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression.

The Federalist, No. 10 at 58 (Lodge ed. 1888). When one party dominates in a community, "that party organization's support can be crucial to winning an election." Note, Nonpartisan Elections at 1696. If §6(b) is invalidated, judges and other local officials will not miss that point.[6] And parties will be back in the intermediary role from which nonpartisanship seeks to remove them.

B. California's Interest In Avoiding Disproportionate Influence In Local And Judicial Elections

Respondents and CDP argue that political parties do not pose the threat of disproportionate influence addressed in *Austin v. Michigan Chamber of Commerce*, 110 S.Ct. 1391 (1990), because the parties' political power derives from their popular support. This argument overshoots the mark. Statutory benefits assist parties in *developing* popular support, giving them a state-sponsored edge in building their power. Avoiding such state favoritism is the central concern in *Austin*. Likewise, §6(b) is aimed at keeping state-favored parties from expanding their influence in an arena they were not meant to control.

Respondents argue that the true concern in *Austin*, when read together with *FEC v. Massachusetts Citizens For Life*, 479 U.S. 238 (1986) ("*MCFL*"), is the lack of correlation between corporate political influence and popular

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[6] Nor will the point be missed by party outsiders or independents who might otherwise consider a run for local office. *See* Pet.Br. 17. Neither Respondents nor CDP refers to the state's interest in keeping nonpartisan doors open to such candidates.

support for the corporation's ideas. By limiting corporations' political spending to segregated funds, government assures that the money a corporation uses to speak comes from people who share its views.

This reasoning is not the foundation of *Austin*. If assuring shareholder support for political spending were *Austin's* rationale, government could prohibit corporations from using their general treasuries to lobby, or to support referenda. By holding that a state cannot forbid corporate spending on ballot measures, *Bellotti* forecloses that result. Thus, the true rationale of *Austin* and *MCFL* is preventing entities from using advantages – given by the state for other purposes – to compete for influence in candidate elections.[7]

Respondents contend that financial corruption cases such as *Austin* have no bearing here because "[t]he hallmark of corruption is the financial *quid pro quo*; dollars for political favors." *FEC v. National Conservative Political Action Committee*, 470 U.S. 480, 497 (1985) ("*NCPAC*"). This argument, however, ignores the fact that *Austin* is a case about *independent expenditures*, which, by definition, involve no prearrangement and no infusion of cash to a candidate or his campaign. *See NCPAC* at 498. Even so, the Court upheld Michigan's right to ban the Chamber of Commerce's full-page endorsement advertisement, a clear suppression of core "debate on the qualifications of candidates." *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989).

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[7] *Austin* establishes that counterbalancing such advantages in candidate elections is not an unconstitutional attempt "to restrict the speech of some elements of our society in order to enhance the relative voices of others. . . ." *Compare Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976).

Respondents argue that *Eu* forecloses Petitioners' claim that state-conferred advantages justify a ban on party endorsements. *Eu*, of course, includes no discussion of the statutory advantages parties receive. There is a good reason. California gives parties those advantages for the express purpose of promoting the parties' role in partisan elections. A party's applying statutory advantages to the purpose for which they were granted does not create the danger present in *Austin* or this case.[8]

CDP asserts that nothing in *Eu* suggests that the Court's analysis turns on the fact that partisan offices were at stake. That is not surprising. In considering whether California's interests in banning pre-primary endorsements were compelling, this Court properly did not address California's very different interests in banning endorsements in nonpartisan elections.

Citing *FCC v. League of Women Voters*, 468 U.S. 364 (1984), CDP argues that speech bans are inappropriate if they encompass organizations whose resources are due largely to sources other than government benefits.[9] The holding of *League of Women Voters* is not so broad. Otherwise, it would be difficult to understand why the plaintiffs there abandoned and never resurrected their challenge to the *ban on candidate endorsements* by public

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[8] For the same reason, CDP's citation to California Revenue and Taxation Code §18702 is unavailing. The party contribution check-off is aimed at promoting the influence of parties *in the partisan sphere*. The state may legitimately pursue this goal and still have a compelling interest in counterbalancing that advantage in *nonpartisan* elections.

[9] CDP points to its relative strength over minor parties as evidence that party influence is not simply a function of government advantages. *Austin* rejected a similar argument. *See* Pet.Br. 25-26. The fact that some parties may be connected to national parties or may use their statutory advantages more effectively than others does not undermine the state's interest in avoiding the danger that advantaged political institutions may disproportionately influence nonpartisan offices.

broadcasting stations. *Id.* at 371 n. 9, and 410 (Stevens, J., diss.).

CDP's reliance on *Consolidated Edison Co. v. Public Serv. Comm'n*, 447 U.S. 530 (1980) is also misplaced. The regulation there was not viewpoint-neutral and, contrary to the teaching of *Bellotti*, restricted corporate speech on public issues as opposed to speech about candidates. Section 6(b) suffers from neither defect.

C. California's Interest In The Impartial, Fair And Effective Administration Of Government And Law

Respondents and CDP attack Petitioners' reliance on *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548 (1973). First, they assert that the rationale of *Letter Carriers* applies only to government employees. Yet the very cases Respondents cite show that the validity of a restriction on speech turns not on the speaker's status as an employee but on an analysis of the interests at stake. *Compare, Connick v. Myers*, 461 U.S. 138, 150-152 (1983) *with Pickering v. Board of Education*, 391 U.S. 563, 572-73 (1968) (whether employee may be disciplined for speech critical of government turns on whether the speech concerns matters of public concern); *compare, Buckley v. Valeo*, 424 U.S. 1, 27 (1976) (relying on *Letter Carriers* to uphold contribution limits which serve interest in avoiding corruption in government) *with Buckley* at 48 n. 54 (distinguishing *Letter Carriers* in invalidating independent expenditure limitations which do not further interest in avoiding corruption.)

Relying on the distinction between employees and non-employees, CDP seizes upon language in *Broadrick v. Oklahoma*, 413 U.S. 601, 616, (1973) stating that Oklahoma's "Hatch Act" restricts political expression "which if engaged in by private persons would plainly be protected. . . . " Ballot-qualified parties, however, are not "private persons," but state-advantaged institutions playing a special role in the state's electoral scheme. California's interests in counterbalancing their advantages and

influence statewide, in promoting citizen government and keeping the doors of nonpartisan office open to independent thinkers, and in assuring the appearance and actuality of a fair, impartial and nonpartisan system of law are even greater than the federal government's interest in *Letter Carriers*.

Respondents and CDP rely heavily on a footnote in *Buckley* which states that the *Letter Carriers* Court "repeatedly emphasized the [Hatch Act] provision . . . permitting an employee to ' "[e]xpress his opinion as an individual privately and publicly on political subjects and candidates." ' 413 U.S. at 579." *Buckley*, 424 U.S. at 48 n. 5.[10] But the critical line the Hatch Act drew does not assist Respondents: the Hatch Act (and its regulations) protected expression unrelated to party politics, while restricting expression related to party politics. 413 U.S. at 579. Indeed, the *Letter Carriers* Court specifically upheld regulations banning "the endorsement of 'a partisan candidate for public office or political party office in a political advertisement, a broadcast, campaign literature, or similar material'." *Ibid*. The Court also upheld a prohibition on "[a]ddressing a convention, caucus, rally, or similar gathering of a political party in support of or in opposition to a partisan candidate for public office or a political party office." *Ibid*.[11] The suggestion that this Court has rejected bans on endorsement of party candidates is mistaken.

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[10] Section 6(b) does not limit individuals, including the members of a county central committee, from expressing their opinions on political subjects and candidates.

[11] The *Buckley* footnote suggests that the *Letter Carriers* Court did not rule on the constitutionality of these regulations, but found only that even if they were overbroad, the Hatch Act as a whole was not substantially overbroad. 424 U.S. at 48 n. 54. The footnote cites page 581 of the *Letter Carrier* opinion. But that page sets forth the Court's *alternative* holding. On the preceding page, the Court upheld the regulations *substantively* "for the same reasons that the other acts of political campaigning [were] constitutionally proscribable." 413 U.S. at 580.

Finally, Respondents and amici assert that §6(b) reflects the "paternalistic" approach that this Court has repeatedly rejected. In fact, virtually every restriction on protected speech may be characterized as "paternalistic" in the sense that it removes the opportunity to hear the message.[12] Yet as *Austin*, *Letter Carriers* and *Buckley* show, when the government's interests are sufficiently strong, restrictions on protected speech survive.[13] This is such a case.

D. California's Interest In Preserving Confidence In Local Government And Courts

"Perservation of the individual citizen's confidence in government" is an interest "of the highest importance." *First National Bank v. Bellotti*, 435 U.S. 765, 789 (1978), *Buckley*, 424 U.S. at 27. ("[A]voidance of the appearance of improper influence 'is . . . critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.' "). For this reason, the State's interest here is far more compelling than the interests asserted in *Boos v. Barry*, 485 U.S. 312 (1988); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); and *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). Order in a democracy

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[12] For example, California Election Code §10200.5 prohibits the listing of candidates' party affiliation on the ballot. Yet Respondents embrace this measure as a less restrictive alternative. Resp.Br. 59. Similarly "paternalistic" are the bans on endorsements by public broadcasters, *see League of Women Voters*, 468 U.S. at 371 n. 9, and on union endorsements communicated to the general public. *See U.S. v. Automobile Workers*, 352 U.S. 567 (1957). Yet these prohibitions have never been held invalid.

[13] For the same reason, the broad pronouncements of First Amendment jurisprudence which Respondents and amici cite are not litmus tests that resolve this case. *See, e.g.*, Resp. Br. 34-36; CDP Br. 4, 6, 8; ACLU Br. 12-13.

does not depend upon public confidence in druggists, lawyers or diplomats. It does, however, depend upon public confidence in government, particularly in the courts. *Cf. Furman v. Georgia*, 408 U.S. 238, 308 (1972) (Stewart, J., concurring.)[14]

Because Respondents and their amici understate the importance of preserving public confidence in government, they do not distinguish between the actuality of justice and its appearance. But since both are compelling interests, California need not prove that judges endorsed by political parties will in fact conform their decisions to the dictates of partisan pressure. The only proof needed to support California's interest in promoting the appearance of justice is the swift passage of Proposition 49 in June 1986, at the first general election after the California Supreme Court's decision in *Unger v. Superior Court*, 37 Cal.3d 612 (1984) (*"Unger II"*). The electoral results supply whatever "legislative findings" are necessary to demonstrate that California's electorate perceives partisan endorsements, particularly in judicial races, as a "threat to the confidence of the citizenry in government." *Bellotti*, 435 U.S. at 790. *See* Brief of Amicus California Judges Association ("CJA Br.") 8.

Respondents and their amici also fail to recognize that "[t]he legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality *and* nonpartisanship." *Mistretta v. United States*, 488 U.S. 361, 407 (1989) (emphasis added). These are two separate and distinct interests. Thus, amici err when they claim that judicial nonpartisanship is not "an end in itself," but

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[14] Moreover, contrary to CDP's claim, the cases they cite do not hold that the governmental interests there asserted were of insufficient importance to justify the challenged policies. Instead, the holding in each case rested upon the challenged policy's failure to meet some *other* element of the "strict scrutiny" standard. *Boos v. Barry*, 485 U.S. at 324; *Bates v. State Bar of Arizona*, 433 U.S. at 368; *Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. at 766.

simply "one vehicle for electing officials." CDP Br. 22 n.15.

Respondents contend that if California chooses to have judicial elections, it is powerless to regulate participation in those elections so as to protect its simultaneous interest in maintaining the appearance of justice. This argument, too, overlooks the difference between judicial impartiality and nonpartisanship. Only party endorsements and support threaten confidence in a nonpartisan judiciary. The danger arises not from the persuasive value of the party's speech, but from the party *label* itself. *See* CJA Br. 11. And it is not an episodic danger that can be resolved through recusal, but a systemic danger to the judiciary as a whole. *See* CJA Br. 15.

Finally, Respondents' reliance on *Bridges v. California*, 314 U.S. 252 (1941), and its progeny[15] overlooks the fact that California has not tried to suppress speech criticizing judges or their decisions. *See New York Times v. Sullivan*, 376 U.S. 254, 272-273 (1964). Section 6(b) does not place judges or their decisions beyond the bounds of political discourse. Under §6(b), political party members and members of party central committees are free to praise and criticize judges as they see fit; they simply cannot do so as the official representatives of political parties and party central committees.

III.

SECTION 6(b) IS NARROWLY TAILORED TO SERVE CALIFORNIA'S COMPELLING INTERESTS IN NONPARTISANSHIP

A. Section 6(b) Is Not Underinclusive

Respondents argue that §6(b) is underinclusive because endorsements by political clubs, unions, and special interest groups pose an equal or greater danger to impartial government and courts. Yet none of these

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[15] *Wood v. Georgia*, 370 U.S. 375 (1962); *Craig v. Harney*, 331 U.S. 367 (1947); *Pennekamp v. Florida*, 328 U.S. 331 (1946).

groups enjoys an institutional role in the structure of California's government. California has partisan and nonpartisan government; the state does not have union and non-union government or corporate and non-corporate government.

Parties differ not only in their role and special advantages, *see* Pet.Br. 15, 23, but also in their mission. Their entire *raison d'etre* is building organizations to win elections:

> Parties operate by placing their members and supporters into positions of power. A major reason parties want to be involved in local nonpartisan elections is to groom candidates for higher partisan office. The local community, however, is interested in its own welfare, not in serving as a training ground for statewide politicians.

Note, Nonpartisan Elections, 87 Colum.L.Rev. at 1680. Given the parties' statewide and national role, the support their leaders bestow may often be motivated less by local concerns than by the need to enforce party loyalty. *Ibid.*; *see* Mayo, "The 1961 Mayorality Election in Los Angeles: The Political Party In A Non-Partisan Election," 17 West.Pol.Q. 325 (1964) (Democratic Party leaders oppose mayoralty candidate who supported Richard Nixon in 1960).[16]

Thus, §6(b) is not underinclusive; it applies to those political institutions and only to those political institutions whose endorsements threaten nonpartisanship.

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[16] Quoting a declaration the Ninth Circuit expressly rejected as part of the record in this case, *see* Order of 4/30/90, CDP argues that a "political party is the *only* organization large enough, open enough, and public enough to give order and *direction* to democracy's political life." CDP Br. 8 (emphasis added). Thus, CDP acknowledges that parties differ from all other associations and that parties have the strength to direct political life. Party "direction" in local affairs is precisely what §6(b) was enacted to avoid.

B. Section 6(b) Is Not Overinclusive

Notwithstanding this Court's rejection of a similar argument in *Austin*, *see* Pet.Br. 25-26, Respondents continue to assert that §6(b) is overinclusive because it applies to weak parties as well as strong ones. Respondents claim that while the fortunes of corporations rise and fall, there have only been two major political parties in the United States. The argument ignores the place of influential third parties in this country's history and the influence of minor parties in individual communities.

Relying on *Jenness*, Respondents also argue that §6(b) fails to account for the "obvious differences in kind between the needs and potentials of a political party with historically established broad support on the one hand, and a new or small political organization on the other." 403 U.S. at 441-442. But *Jenness* was explaining why a state may differentiate between ballot-qualified parties and "political organizations" that have not demonstrated some minimal level of support; the Court was not referring to differences between strong and weak qualified parties. *Jenness* provides no support for Respondents' claim.

C. Section 6(b) Is Not Invalid On The Theory That It Imposes A Total Ban On Party Advocacy

Respondents and CDP assert that §6(b) forecloses all political advocacy by parties in nonpartisan elections. Even the Michigan statute in *Austin*, they point out, permits corporate spending through segregated PACs. And federal election law permits associations to communicate endorsements to their members. *See United States v. CIO*, 335 U.S. 106 (1948).

Neither point demonstrates that §6(b) is overbroad. First, the ban on political spending in *Austin* was quite absolute; it forbade all spending by the corporation as such. The statute allowed spending only by the corporate PAC, a different association composed of a subset of shareholders. Similarly, under §6(b), there is nothing to

prevent members of the political parties from joining together as Republicans or Democrats for any candidate. The same people can furnish the public with their viewpoints on candidates' records and qualifications. They simply may not do so in the name of the party.

Second, the difference between political parties, on one hand, and corporations or unions on the other, explains why §6(b)'s approach is necessary in a nonpartisan election setting.[17] Parties are election-dedicated organizations whose collective membership is "uniquely pervasive," *see FCC v. Pacifica Foundation*, 438 U.S. 726, 748-749 (1978), covering virtually the entire electorate. Communication of endorsements to party members in a nonpartisan election is the equivalent of publication to the community. *Compare United States v. CIO*, 335 U.S. 106, with *U.S. v. Automobile Workers*, 352 U.S. 567 (1957). In an election environment, the notion of party endorsements circulated only to party members is a fiction.

Finally, Respondents emphasize that California stands alone in restricting party advocacy in local and school elections. But the fact that one state does not impose a particular restriction does not render the restriction unnecessary in the electoral scheme of another state. *See American Party of Texas v. White*, 415 U.S. 767, 785 n.17 (1974). The systems and experiences of each state differ.[18] California is the only state with a partisan, statewide political structure having nonpartisan nominating procedures for all school and local offices. *See* Appendix A. Thus, California's commitment to nonpartisan local offices is stronger than any other state with a partisan

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[17] "[E]ntities [with] differing structures and purposes. . . . may require different forms of regulation in order to protect the integrity of the electoral process." *California Medical Ass'n. v. FEC*, 453 U.S. 182, 201 (1981).

[18] *Cf., New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932) (Brandis. J., diss.) (A "State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.")

statewide system. In addition, the statutory benefits California gives its political parties are greater than those in any other state. See Appendix B. Thus, the scope of §6(b) is simply a reflection of California's singular political structure, one that has served its purposes remarkably well.

D. No Less Restrictive Alternatives Adequately Protect California's Compelling Interest In Nonpartisanship

Respondents offer various alternatives to §6(b) which they claim are less drastic. In fact, none adequately serves the compelling interests which underlie the measure.

First, Respondents propose nonpartisan nominating procedures for all state offices. Having earlier argued that §6(b) is not a structural measure, Respondents now suggest that the state forego its right to structure statewide government on a partisan model.[19] *See* fn.3 *ante*. In examining whether less restrictive alternatives are available, however, a court should not require a state to choose another political structure. Otherwise, the Guarantee Clause which protects the right of each state to structure its representative forms of government, would be meaningless.[20]

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[19] Louisiana has a system in which parties do not nominate candidates for statewide office. Respondents argue that if Louisiana had a §6(b), the Republican Party would not have been able to disavow the gubernatorial candidacy of David Duke. The argument is incorrect. In reality, the problem arose because under Louisiana law, Mr. Duke was permitted to list his party affiliation on the ballot in a nonpartisan race. Had the election taken place under California law, Mr. Duke would not have received the respectability and support that the listing of such party affiliation bestows. Moreover, nothing in §6(b) prevents a party from publishing the fact that a candidate claiming to be the party's own is not endorsed or supported by the party.

[20] Respondents assert that *Baker v. Carr*, 369 U.S. 186 (1962), and the other apportionment cases negate any claim

(Continued on following page)

Second, Respondents propose that California could make nonpartisan elective positions appointive. But it would surely be a pyrrhic victory for parties to gain the right to make endorsements in nonpartisan elections, only to have the state eliminate the elections altogether. *Cf., Posadas de Puerto Rico Associates v. Tourism Co.*, 478 U.S. 328, 343 (1986). Removing the voters' right to select local executives and legislators is not a less drastic alternative but a complete restructuring of California's local government. With respect to judges, California has opted for the measure of responsiveness that elections provide. This decision in no way eliminates the state's compelling interest in protecting judges from the appearance of partisanship.

Respondent's other proposed alternatives also fall short. Nonpartisan nomination procedures, whether alone or in combination with a state "Hatch Act", limitation on party spending, public funding of elections, or longer terms of office, do not adequately protect the goals of nonpartisanship. As Respondents' own authorities conclude, so long as parties can endorse, "municipalities that are non-partisan in name [will be] decidedly partisan in fact." MacDonald, *American City Government and Administration*, 250 (6th ed. 1947); *see* fn. 22 *ante*.

Respondents attack Petitioners' failure to make a particularized showing that party endorsements cause this harm or that lesser measures would not adequately serve the state's interests in nonpartisanship. CDP asserts that

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(Continued from previous page)

that the Guarantee Clause assists California in this case. But denial of "one person/one vote" undermines representative government, the foundation of republicanism. *See The Federalist*, No. 39 (Madison) 233 (Lodge ed. 1888). Section 6(b) does not.

the cases upholding statutes in the absence of such showings are not strict scrutiny cases.[21]

Respondents and amici are incorrect on several fronts. In *Austin*, for example, there was no particularized showing that the relative voice of corporations was significant or that the Chamber of Commerce benefited from a state-conferred corporate structure that facilitated the accumulation of wealth. 110 S.Ct. at 1422 (Kennedy, J., diss.). Indeed, in applying strict scrutiny, the *Austin* Court "accept[ed] Congress' judgment that it is the *potential* for such influence that demands regulation." *Id.* at 1398 (emphasis original), *quoting FEC v. National Right to Work Committee* ("*NRWC*"), 459 U.S. 197, 209-210 (1982).

Similarly, in *Storer v. Brown*, 415 U.S. at 736, the Court relied on its own experience and common sense in upholding a statute that burdened associational rights:

> It appears *obvious* to us that the one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling. . . . *Nor do we have reason for concluding that the device California chose . . . was not an essential part of its overall mechanism* to achieve its acceptable goals. . . . To conclude otherwise *might* sacrifice the political stability of the system of the State, with profound consequences for the entire citizenry. . . . [Emphasis added.]

In decrying the lack of proof of tangible harm, Respondents continue to assert that party endorsements

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[21] CDP contends that *Letter Carriers* employs a rational basis test. That claim is inconsistent with *Bellotti*, 435 U.S. at 789 (characterizing the interests in *Letter Carriers* as "of the highest importance") and *Elrod v. Burns*, 427 U.S. 347, 366-367 (1976) (describing *Letter Carriers* as upholding speech restraints because "they did serve in a *necessary* manner to foster and protect efficient and effective government.") (emphasis added). *Elrod* itself applies strict scrutiny to restrictions on the First Amendment rights of government employees. *Id.* at 362.

were widespread before 1986, when §6(b) was enacted. The various studies Respondents cite disprove their claim.[22] But even assuming *arguendo* that party endorsements occurred with regularity before 1986, the argument fails.

First, in rejecting *Unger II* so decisively, California voters made clear that they intended the words "nonpartisan offices" in §6(a) to mean more than a system in which state-favored parties play no role in nominating the officeholders; they meant a system in which the parties do not play a role in *electing* the officeholders. In such a system, the officeholders answer directly to the people. To show harm to that vision, petitioners need not

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[22] *See* Resp.Br. 21. For example, Respondents quote only the last sentence from the following passage:

> BEHIND-THE-SCENES PARTY CONTROL. Many times the desired result of nonpartisanship is actually achieved. In California cities, for example, local elections are usually fought out along local lines, without reference to Abraham Lincoln or Thomas Jefferson. But a number of municipalities that are non-partisan in name are very decidedly partisan in fact. For there is nothing to prevent the party organizations from endorsing their respective candidates and working as hard as ever for their election.

MacDonald, *American City Government and Administration* 250. As the full passage shows, party endorsements in California were the exception before §6(b) was enacted, and when they occurred, they jeopardized nonpartisanship.

Similarly, CDP argues that Professor Lee's study shows that party endorsements occurred in 90% of the highly populated counties of California. But that argument presumes that the endorsements were made by *official parties*. Lee's questionnaire was not limited to endorsements by official parties. See Pet.Br. 27 n.11. Significantly, one study Respondents cite shows that the "partisan" local activity was by party-related individuals and entities, *not by the parties themselves*. *See*, Mayo, *"The 1961 Mayoralty Election In Los Angeles: The Political Party In A Non-Partisan Election,"* 17 West.Pol.Q. 325 (1964).

produce evidence of actual corruption; the harm is to the citizens' "power to choose the government forms that work best for them." Merritt, 88 Colum.L.Rev. at 41.

The second answer is provided by *Munro v. Socialist Workers Party*, 479 U.S. 189 (1986). In *Munro*, Washington enacted a law making access to the general election ballot more difficult for minor parties. The Ninth Circuit invalidated the law, reasoning that the State had produced no evidence that easy access to the general election ballot had created voter confusion or any other evil. *Id.* at 194-195. This Court reversed, finding the absence of such proof immaterial.

Indeed, this Court has long upheld statutes restricting voting rights, associational rights and core political speech based on history, legislative determinations, precedent and the court's own experience and common sense. *See, e.g., Munro*, at 196 (relying on "legislative perception"); *NRWC*, 459 U.S. at 210 (refusing to "second-guess a legislative determination . . . where corruption is the evil feared"); *Letter Carriers*, 413 U.S. at 557 (relying on "judgment of history"); *Storer*, 415 U.S. at 736 (relying on inherent persuasiveness of rationale underlying statue); *American Party of Texas v. White*, 415 U.S. at 787 ("Constitutional adjudication and common sense are not at war with each other.").

In this case, each of these bases for upholding §6(b) is present. First, the measure derives directly from California's history. *See* Pet.Br. 11-12. Second, the record includes uncontested testimony about the harmful effects of party endorsements in nonpartisan races. J.A. 27-37.[23] Third, the incompatibility of party endorsements and nonpartisan offices is a matter of common sense and ordinary

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[23] Citing *New York City Bd. of Estimate v. Morris*, 489 U.S. 688 (1989), CDP asserts that this Court must defer to the District Court's weighing of testimony. But *Morris* did not involve undisputed evidence. Reviewing courts may reweigh such evidence independently. *See U.S. v. Parke, Davis & Co.*, 362 U.S. 29, 44 (1960).

meaning. *See* Pet.Br. 31-32. Finally, the legislative history of §6(b), including the sponsor's statement, the ballot argument and the voters' rejection of *Unger II*, sets forth the reasons why California believed §6(b) was necessary to further their compelling interests. *See* Pet.Br. 9-10, 12-14, 19.

Notwithstanding the cases cited above, CDP argues that deference to such legislative history is not warranted here.[24] CDP relies on *Sable Comm'ns v. FCC*, 492 U.S. 115, 109 S.Ct. 2829 (1989). There, however, the FCC had specifically approved feasible, less restrictive regulations, and the government simply failed to implement them. *Id.* at 2837.

Here, following *Unger II*, it was the considered judgment of the citizens of California that a ban on endorsements was needed to preserve nonpartisanship. The expertise of the electorate in such matters cannot be doubted. The judgment should be reversed.

DATED: April 15, 1991 Respectfully submitted,

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[24] It is unclear what further evidence could be produced of what the voters thought when they enacted §6(b).

APPENDIX A

Comparison of Nonpartisan Local Nomination Procedures

This appendix groups the various states according to nonpartisan nomination procedures at the local government level, as provided by statute.

TIER I: *All Local Nominations Nonpartisan/State Nominations Partisan.*

CALIFORNIA. Cal. Const. Art. II, §6 (judicial, school, county and city offices).

TIER II: *All Local Nominations Nonpartisan/State Nominations Nonpartisan.*

LOUISIANA.[1] La. Rev. Stat. Ann. §§18:401 *et seq.*, 18:481 *et seq.*

TIER III: *Local Nominations Generally Nonpartisan/State Nominations Partisan.*

COLORADO. Colo. Rev. Stat. §§22-31-105, 22-31-107, 31-10-302, 31-10-902, 32-1-807, 32-1-811, (municipal, school district and special district offices).

MAINE. Me. Rev. Stat. Ann. title 30-A, §2553 (city offices).

NEBRASKA. Neb. Rev. Stat. §32-535 (state board of education, county superintendents, district superintendents, the state legislature, regents of the University of

[1] Louisiana operates a "primary" system for all offices, including local and judicial offices, but there is no party nomination.

Nebraska, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resource districts, specified boards of education, and officers of 1st and 2nd class cities and villages).

NEW JERSEY. N.J. Rev. Stat. Ann. §§40:45-6, 40:45-8, 40:45-10 (municipal offices).

NEW MEXICO. N.M. Stat. Ann. §§1-22-10, 3-8-29 (municipal and school district offices).

NORTH DAKOTA. N.D. Cent. Code §§15-28-09, 16.1-11-08, 40-21-06 (municipal, county and school offices).

SOUTH DAKOTA. S.D. Codified Laws Ann. §§9-13-7, 9-13-21 (municipal offices).

VERMONT. Vt. Stat. Ann. title 17, §2681a (municipal offices).

WASHINGTON. Wash. Rev. Code §29.21.010 (city and some special purpose district offices).

WISCONSIN. Wis. Stat. Ann. §§5.58, 5.62, 59.12 (local offices and some county offices).

WYOMING. Wyo. Stat. §§22-22-304, 22-23-102 (municipal and school district offices).

Tier IV: *Local Nominations Selectively Nonpartisan/ State Nominations Partisan.*[2]

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[2] The remaining states (Connecticut, Delaware, Florida, Hawaii, Indiana, Kansas, Massachusetts, Michigan, Minnesota,

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ALABAMA. Ala. Code §11-46-3 (municipal offices in cities and towns of 300,000 or less).

ALASKA. Alaska Stat. §29.29.010 (optional for municipal offices).

ARIZONA. Ariz. Rev. Stat. Ann. §§9-821.01, 16-502 (school district offices; optional for municipal offices).

ARKANSAS. Ark. Stat. Ann. §§14-47-110, 14-48-110 (municipal offices in city-manager and city-administrator governments).

GEORGIA. Ga. Code Ann. §34-1016.2 (local school boards and school superintendents; optional for local offices).

IDAHO. Idaho Code §34-905A (highway district commissioners).

ILLINOIS. Ill. Rev. Stat. title 46, §§10-3, 16-4.1 (school district offices; optional for municipal offices).

IOWA. Iowa Code §39.21 (regional library trustees, county public hospital trustees and soil and water conservation district commissioners; optional for local offices).

KENTUCKY. Ky. Rev. Stat. Ann. §§83A.050, 83A.170 (municipal offices in city manager governments; optional for municipal offices in non-city manager governments).

(Continued from previous page)

Mississippi, Missouri, New York, Pennsylvania, Rhode Island, Texas and Virginia) provide for partisan nominations of local officers in their statutory schemes.

MARYLAND. Md. Elec. Code Ann. §32-2 (county boards of education).

MONTANA. Mont. Code Ann. §§7-3-219, 7-3-314, 7-3-413, 7-3-513, 7-3-603, 7-3-704, 7-3-4341 (town meeting governments and municipal commission-manager governments; optional for other forms of local government).

NEVADA. Nev. Rev. Stat. Ann. §293.195 (state board of education, school district trustees, county sheriff and public hospital trustees).

NEW HAMPSHIRE. N.H. Rev. Stat. Ann. §§669.13, 670.7, 671:20, 671:30 (school district offices; optional for city, town and village offices).

NORTH CAROLINA. N.C. Gen. Stat. §115C-37 (boards of education; optional for local offices).

OHIO. Ohio Rev. Code Ann. §3505.04 (state and local boards of education; optional for municipalities and townships).

OKLAHOMA. Okla. Stat. title 11, §16-105.1 (school offices; optional for municipalities).

OREGON. Or. Rev. Stat. §249.002 (school superintendents, executives of metropolitan service districts, justices of the peace, sheriffs and district attorneys).

SOUTH CAROLINA. S.C. Code Ann. §5-15-60 (optional for municipalities).

TENNESSEE. Tenn. Code Ann. §6-31-104 (municipal officers in city manager governments).

UTAH. Utah Code Ann. §20-7-5 (state and district boards of education, cemetery maintenance commissioners).

WEST VIRGINIA. W. Va. Code §3-5-6 (boards of education).

APPENDIX B

Comparison of Statutory Advantages
Granted to Official Political Parties
In States With Nonpartisan
Local Nomination Procedures[1]

TIER I: *All Local Nominations Nonpartisan/State Nominations Partisan.*

CALIFORNIA provides for party enrollment as part of the voter registration process. County central committees may submit party contributor envelopes or one-page solicitation letters to be mailed at public expense by the county with the sample ballots. The state provides meeting places for county central committees. County clerks are required to prepare at public expense sample ballots for political parties in primary elections and mail those ballots to the voters. County clerks must also furnish state and county central committees with printed indices of registered voters without charge. The state collects contributions of up to 25 dollars on behalf of official parties as an option on all California personal income tax returns. Cal. Elec. Code §§501, 605, 8920, 9420, 9730, 9840, 10007, 10010.5; Cal. Rev. & Tax. Code §§18701 *et seq.*

TIER II: *All Local Nominations Nonpartisan/State Nominations Nonpartisan.*

LOUISIANA does not provide official parties with any specific statutory advantages.

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[1] All the states, except Louisiana, also provide the official parties with the advantages associated with ballot access through the state primaries.

TIER III: *Local Nominations Generally Nonpartisan/State Nominations Partisan.*

MAINE allows party enrollment as part of registration. Registrars must supply party caucuses with voting lists at the city's expense. Me. Rev. Stat. Ann. title 21-A, §§141, 312.

VERMONT mails a copy of the voting list to the local party chair. Vt. Stat. Ann. title 4, §2141.

WASHINGTON allows nominees of each party for president and vice president to submit one page for candidates' pamphlet at the state's expense. Wash. Rev. Code Ann. §29.80.050.

WYOMING provides for mailing of a copy of voter registration lists to the chairperson of each political party 10 days before the election. Wyo. Stat. §22-3-109.

COLORADO, NEBRASKA, NEW JERSEY, NEW MEXICO, NORTH DAKOTA, SOUTH DAKOTA, and WISCONSIN do not provide official parties with any specific statutory advantages.

TIER IV: *Local Nominations Selectively Nonpartisan/State Nominations Partisan.*

ALABAMA collects voluntary contributions to official parties through personal income tax returns. The parties may also obtain all voter information in the possession of registrars. Ala. Code §§17-4-122, 40-18-146.

ARIZONA maintains a political parties trust fund, funded by an income tax refund checkoff. A party chairman may request one sample primary election ballot of

his or her party for each election precinct. Ariz. Rev. Stat. Ann. §§16-461, 16-807.

GEORGIA distributes a percentage of the candidates' qualification fee to state political parties. The state may reimburse a party for any or all of the costs of holding a primary. Ga. Code Ann. §§34-1013, 34A-909.

IDAHO provides public funding for campaigns through an income tax checkoff. Idaho Code §§34-2504 *et seq.*, 63-3089.

IOWA maintains an election campaign fund funded through an income tax liability checkoff. Iowa Code §§56.18-56.25.

KENTUCKY maintains an election campaign fund funded through an income tax checkoff. Ky. Rev. Stat. Ann. §§121.230, 141.071, 141.072.

NORTH CAROLINA provides for public financing of political parties through voluntary designations on personal income tax returns. N.C. Gen. Stat. §§105-159.1, 163-278.41 *et seq.*

OHIO maintains a political party fund funded through an income tax checkoff. Ohio Rev. Code Ann. §§3517.16, 3517.18.

OREGON provides parties with voter lists. Or. Rev. Stat. §§247.940, 247.945.

SOUTH CAROLINA provides the official parties with copies of voter lists for party primaries. S.C. Code Ann. §7-5-420.

ILLINOIS, MARYLAND, MONTANA, NEVADA, NEW HAMPSHIRE, OKLAHOMA, TENNESSEE, UTAH

and WEST VIRGINIA do not provide official parties with any specific statutory advantages.

APPENDIX C

Comparison of Nonpartisan Judicial Election Procedures

This appendix groups the various states according to nonpartisan election procedures for judicial officers, as provided by statute.[1]

TIER I: *Nonpartisan Contested Elections.*[2]

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[1] Eleven states provide for the partisan election of judges: Alabama (Ala. Const. Art. VI, §6.13, Ala. Code §§17-7-1, 17-16-20); Arkansas (Ark. Const. Art. 7, §§6, 17, Ark. Stat. Ann. §§7-5-208, 7-7-102, 7-7-103); Mississippi (Miss. Code Ann. §23-15-971); New Mexico (N.M. Const. Art. 6, §33); New York (N.Y. Const. Art. 6, §6, N.Y. Elec. Law §§6-100 *et seq.*, 7-104); North Carolina (N.C. Gen. Stat. §§7A-10, 163-140); Pennsylvania (Pa. Const. Art. 5, §13, Pa. Stat. Ann. title 25, §§2752, 2754); Tennessee (Tenn. Const. Art. 6, §4, Art. 7, §5, Tenn. Code Ann. §§2-13-203, 17-1-103); Texas (Tex. Const. Art. 5, §§2, 4, 6); West Virginia (W.Va. Const. Art. 8, §§3, 5, W.Va. Code §§3-1-16, 3-1-17, 3-5-7, 3-5-8); Wisconsin (Wis. Const. Art. 7, §§4, 7, Wis. Stat. Ann. §§5.58, 5.60, 5.62, 5.64). The remaining states appoint judges for life: Connecticut (Conn. Const. Art. V, §2); Delaware (Del. Const. Art. IV, §3); Hawaii (Haw. Const. Art. VI, §3; Maine (Me. Const. Art. 5, Pt. 1, §8, Art. 6, §4); Massachusetts (Mass. Const. Pt. 2, Ch. 3, Art. 1); New Hampshire (N.H. Const. Pt. 2, Arts. 46, 73); New Jersey (N.J. Const. Art. 6, §6); Rhode Island (R.I. Const. Art. 10, §4, R.I. Gen. Laws §8-2-2); South Carolina (S.C. Const. Art. 5, §§3, 8); Vermont (Vt. Stat. Ann. title 4, §603); Virginia (Va. Const. Art. VI, §7).

[2] Except as indicated in footnotes below, this category includes those states in which judicial officers are subject to contested elections, regardless of whether the incumbent was originally appointed or elected.

ARIZONA. Ariz. Const. Art. 6, §12 (superior court); Ariz. Rev. Stat. Ann. §16-502.[3]

CALIFORNIA. Cal. Const. Art. II. §6, Art. VI, §16.[4]

FLORIDA. Fla. Const. Art. 5, §15; Fla. Stat. §105.041.[5]

GEORGIA. Ga. Code Ann. §§34-1016.1, 34-1016.2.

IDAHO. Idaho Code §34-905.

KENTUCKY. Ky. Const. §117; Ky. Rev. Stat. Ann. §118A.060.

LOUISIANA. La. Rev. Stat. Ann. §§401 *et seq.*, 481 *et seq.*, 551.

MICHIGAN. Mich. Const. Art. 6, §§2, 8.

MINNESOTA. Minn. Const. Art. 6, §7; Minn. Stat. Ann. §204B.36.

MONTANA. Mont. Const. Art. VII, §; Mont. Code Ann. §13-14-115.[6]

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[3] Arizona's supreme court and appellate justices are subject to retention elections. Ariz. Const. Art. 6, §38.

[4] California's supreme court and appellate justices are subject to retention elections. Cal. Const. Art. 6, §16. California prohibits political parties from endorsing, supporting or opposing candidates in judicial campaigns. Cal. Const. Art. II, §6.

[5] Florida prohibits political parties from endorsing, supporting or assisting candidates in judicial campaigns. Fla. Stat. Ann. §105.071. *But see, Concerned Democrats of Florida v. Reno,* 458 F.Supp. 60 (S.D. Fla. 1978).

[6] Some Montana judicial offices are only subject to retention elections. Mont. Const. Art. VII, §8. Montana prohibits political parties from endorsing or contributing to the campaigns of judicial candidates. Mont. Code Ann. §§13-35-231, 3-10-201.

NEBRASKA. Neb. Rev. Stat. §32-535.[7]

NEVADA. Nev. Rev. Stat. §293.195.

NORTH DAKOTA. N.D. Const. Art. VI, §9; N.D. Cent. Code §16.1-11-08.

OHIO. Ohio Rev. Code Ann. §3505.04.

OKLAHOMA. Okla. Const. Art. 7, §3; Okla. Stat. Ann. title 26, §11-108.

OREGON. Or. Rev. Stat. §249.002.

SOUTH DAKOTA. S.D. Const. Art. 5, §7.[8]

WASHINGTON. Wash. Const. Art. 4, §§3, 5; Wash. Rev. Code Ann. §29.21.070.

TIER II: *Non Partisan Retention Elections*

ALASKA. Alaska Const. Art. IV, §§5, 6; Alaska Stat. §§15.35.030, 15.35.053, 15.35.060, 15.35.100.

COLORADO. Colo. Const. Art. VI, §§20, 25.

ILLINOIS. Ill. Rev. Stat., chap. 46, para. 16-6.1.[9]

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[7] Nebraska supreme court justices are appointed for life. Neb. Const. Art. V, §21.

[8] South Dakota's supreme court justices are subject to retention elections. S.D. Codified Laws Ann. §16-1-2. South Dakota prohibits parties from endorsing or nominating judicial candidates. S.D. Codified Laws Ann. §12-9-2.

[9] Illinois judges may be initially selected by appointment or partisan election. Ill. Const. Art. 6, §12.

INDIANA. Ind. Const. Art. 7, §§10, 11.[10]

IOWA. Iowa Code §§46.1 *et seq.*

KANSAS. Kan. Const. Art. 3. §6.[11]

MARYLAND. Md. Const. Art. IV, §§3, 5, 5A.[12]

MISSOURI. Mo. Const. Art. 5, §29.

NEW MEXICO. N.M. Const. Art. VI, §35.[13]

UTAH. Utah Const. Art. VIII, §§8, 9.

WYOMING. Wyo. Const. Art. 5, §4.

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[10] Indiana elects circuit judges at a partisan primary. Ind. Const. Art. 7, §7; Ind. Code Ann. §3-8-2-5. The judges subsequently face retention elections. Ind. Code Ann. §3-10-2-8.

[11] Kansas provides for the optional nonpartisan election of district court judges. Kan. Const. Art. 3, §6.

[12] Circuit judges run in party primaries regardless of affiliation and the top three vote-getters are placed on the general election ballot.

[13] New Mexico judges may be initially selected by appointment or partisan election.

APPENDIX D

Comparison of Statutory Advantages Granted
to Official Political Parties In States
With Nonpartisan Judicial Election Procedures

TIER I: *Nonpartisan Contested Elections.*

ARIZONA maintains a political parties trust fund, funded by an income tax refund checkoff. A party chairman may request one sample primary election ballot of his or her party for each election precinct. Ariz. Rev. Stat. Ann. §§16-461, 16-807.

CALIFORNIA provides for party enrollment as part of the voter registration process. County central committees may submit party contributor envelopes or one-page solicitation letters to be mailed at the public expense by the county with the sample ballots. The county provides meeting places for the county central committee. County clerks are required to prepare at public expense sample ballots for political parties in primary elections and mail those ballots to the voters. County clerks must also furnish state and county central committees with printed indices of registered voters without charge. The state collects contributions of up to 25 dollars on behalf of official parties as an option on all California personal income tax returns. Cal. Elec. Code §§501, 605, 8920, 9420, 9730, 9840, 10007, 10010.5; Cal. Rev. & Tax. Code §§18701 *et seq.*.

GEORGIA distributes a percentage of the candidates' qualification fee to state political parties. The state may reimburse a party for any or all of the costs of holding a primary. Ga. Code Ann. §§34-1013, 34A-909.

KENTUCKY maintains an election campaign fund funded through an income tax checkoff. Ky. Rev. Stat. Ann. §§121.230. 141.071, 141.072.

MICHIGAN allows official parties to request the month and day of birth of voters to challenge voter eligibility. Nominees from official parties are entitled to a greater share of public campaign funds. Mich. Comp. Laws Ann. §§168.522, 169.265.

MINNESOTA gives all employees the right to be absent from work to attend party caucuses. No state or local agency, including schools and colleges, may hold a meeting or schedule an event for after 6:00 p.m. on the date of a precinct caucus. State and local agencies, including schools and colleges, must make their facilities available for party caucuses and conventions, at their lowest price. Minn. Stat. Ann. §§202A.19, 202A.192.

NORTH DAKOTA pays the expenses of delegates to political party national conventions up to $200 per delegate. N.D. Cent. Code §16.1-03-15.

OHIO maintains a political party fund funded through an income tax checkoff. Ohio Rev. Code Ann. §§3517.16, 3517.18.

OREGON provides parties with free access to voter lists. Or. Rev. Stat. §§247.940, 247.945.

WASHINGTON allows nominees of each party for president and vice president to submit one page for candidates' pamphlet at the state's expense. Wash. Rev. Code Ann. §29.80.050.

FLORIDA, IDAHO, LOUISIANA, MONTANA, NEBRASKA, NEVADA, OKLAHOMA and SOUTH

DAKOTA do not provide official parties with any specific statutory advantages.

TIER II: *Nonpartisan Retention Elections*

IOWA maintains an election campaign fund funded by an income tax liability checkoff. Iowa Code §§56.18-56.25.

WYOMING provides for mailing of a copy of voter registration lists to the chairperson of each political party 10 days before the election. Wyo. Stat. §22-3-109.

ALASKA, COLORADO, ILLINOIS, INDIANA, KANSAS, MISSOURI and UTAH do not provide official parties with any specific statutory advantages.